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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                   UNITED STATES OF AMERICA,

CASE NO. CR13-0333JLR

11                   Plaintiff,

ORDER

12                   v.

13                   HUGO ARGUETA-GONZALEZ,

14                   Defendant.

15                   **I. INTRODUCTION**

16         Before the court is *pro se* Defendant Hugo Argueta-Gonzalez's motion for a  
17 reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2). (Mot. (Dkt. # 33); Reply (Dkt.  
18 # 37).) Plaintiff the United States of America (the "Government") opposes Mr.  
19 Argueta-Gonzalez's motion. (Resp. (Dkt. # 36).) The court has considered Mr.  
20 Argueta-Gonzalez's motion, the parties' submissions in support of and in opposition to

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1 the motion,<sup>1</sup> the relevant portions of the record, and the applicable law. Being fully  
 2 advised, the court DENIES Mr. Argueta-Gonzalez's motion.

3 **II. BACKGROUND**

4 Mr. Argueta-Gonzalez is a 58-year-old inmate who is currently detained at Federal  
 5 Correctional Institution ("FCI") Fort Dix. *See Inmate Locator*, Fed. Bureau of Prisons,  
 6 <https://www.bop.gov/inmateloc/> (last visited Jan. 25, 2024). Throughout 2012 and 2013,  
 7 Mr. Argueta-Gonzalez conspired with multiple confidential informants to transport illicit  
 8 substances across the U.S.-Canada border for distribution. (*See* Presentence Investigation  
 9 Report ("PSR") (Dkt. # 27 (sealed)) at 4.) Following Mr. Argueta-Gonzalez's arrest in  
 10 Canada in 2017 and his extradition to the U.S. in 2020 (*id.* at 3), Mr. Argueta-Gonzalez  
 11 pleaded guilty to one count of conspiracy to distribute controlled substances (Plea  
 12 Agreement (Dkt. # 24) at 1). He had no prior criminal history. (PSR at 7.)

13 On March 1, 2021, the court sentenced Mr. Argueta-Gonzalez to 74 months of  
 14 imprisonment followed by four years of supervised release—a significant downward  
 15 departure from the guideline range of 210 to 262 months. (*See* 3/1/21 Min. Entry (Dkt.  
 16 # 31); Judgment (Dkt. # 32); Sentencing Recommendation (Dkt. # 28 (sealed)) at 1; Pl.  
 17 Sentencing Mem. (Dkt. # 29) at 5.) In imposing this sentence, the court relied on the  
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 20 <sup>1</sup> Mr. Argueta-Gonzalez's reply appears to be untimely. (*See* Sched. Order (Dkt. # 34) at  
 21 2 ("Any Reply Brief shall be filed within seven days after service of the Government's  
 22 Response."). *See generally* Resp. (filed on December 6, 2023); Reply (filed on January 8,  
 2024).) Because the Government never moved to strike Mr. Argueta-Gonzalez's untimely filing  
 (see generally Dkt.), the court exercises its discretion to consider the reply. *See, e.g., Martinez v.  
 IndyMac Mortg. Servs.*, No. EDCV 10-01495 VAP(PJWx), 2010 WL 11556594, at \*1 n.1 (C.D.  
 Cal. Dec. 2, 2010) (exercising discretion to consider untimely filings).

1 factors set forth in 18 U.S.C. § 3553(a), including Mr. Argueta-Gonzalez's personal  
2 background and characteristics such as his history as a refugee, immigration status, clean  
3 criminal record, age, and post-arrest cooperation with authorities. (*See* Pl. Sentencing  
4 Mem. at 7; Def. Sentencing Mem. (Dkt. # 30) at 2-7; Sentencing Recommendation at  
5 2-3.) Mr. Argueta-Gonzalez's projected release date is July 9, 2024. *See Inmate*  
6 *Locator*. On November 13, 2023, Mr. Argueta-Gonzalez filed a motion for a reduction in  
7 sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 to the U.S. Sentencing  
8 Guidelines. (*See* Mot. at 1.)

### 9                   **III. ANALYSIS**

10         The court begins with the principle that a "judgment of conviction that includes [a  
11 sentence of imprisonment] constitutes a final judgment and may not be modified by a  
12 district court except in limited circumstances." *Dillon v. United States*, 560 U.S. 817,  
13 824 (2010) (internal quotations omitted). 18 U.S.C. § 3582(c)(2) carves an exception to  
14 the general rule of finality, providing that

15         in the case of a defendant who has been sentenced to a term of imprisonment  
16 based on a sentencing range that has subsequently been lowered by the  
17 Sentencing Commission pursuant to 28 U.S.C. 994(o) . . . the court may  
18 reduce the term of imprisonment, after considering the factors set forth in  
19 section 3553(a) to the extent that they are applicable, if such a reduction is  
20 consistent with applicable policy statements issued by the Sentencing  
21 Commission.

22         18 U.S.C. § 3582(c)(2). To qualify for a sentence reduction under 18 U.S.C.  
23 § 3582(c)(2), two conditions must be met: (1) the defendant must have been sentenced to  
24 a term of imprisonment based on a sentencing range that has been lowered by a  
25 retroactively applicable guidelines amendment; and (2) the sentence reduction sought

1 must be consistent with the Sentencing Commission's applicable policy statements.  
2 *United States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam). The court lacks  
3 jurisdiction to grant a sentence reduction absent these two requirements. See *United*  
4 *States v. Wessen*, 583 F.3d 728, 730-31 (9th Cir. 2009).

5 Relevant here, Amendment 821 to the Sentencing Guidelines took effect  
6 November 1, 2023, and applies retroactively. See *Sentencing Guidelines for the United*  
7 *States Courts*, 88 Fed. Reg. 60534 (Sept. 1, 2023); *Amendment 821*, U.S. Sent'g  
8 Comm'n, <https://www.ussc.gov/guidelines/amendment/821> (last visited Jan. 25, 2024).  
9 “Part B, Subpart 1 of the amendment provides a two-level reduction in the offense level  
10 for certain zero-point offenders—that is, defendants with no criminal history whose  
11 offenses meet the guideline’s criteria.” *United States v. Diaz-Diaz*, No. CR19-0187JCC,  
12 2023 WL 9040636, at \*1 (W.D. Wash. Dec. 29, 2023); see also United States Sentencing  
13 Guidelines (“U.S.S.G.”) § 4C1.1(a).

14 Mr. Argueta-Gonzalez had no criminal history when sentenced. (PSR at 7.) He  
15 now argues he is entitled to a reduction in sentence through the retroactive application of  
16 Amendment 821, which reduces his total offense level from 37 to 35 and his guideline  
17 range from 210-262 months to 168-210 months. (Mot. at 1, 7; Reply at 1.) The  
18 Government does not dispute that Amendment 821 reduces Mr. Argueta-Gonzalez’s total  
19 offense level and guideline range in this manner but argues he “is not eligible for a  
20 reduction in sentence because his original sentence is already significantly shorter than  
21 the low end of his amended range.” (Resp. at 5 (citing U.S.S.G. § 1B1.10(b)(2)(A)-(B)).)  
22 Mr. Argueta-Gonzalez replies that, despite receiving a sentence well below the standard

1 range, his reduced guideline range following Amendment 821 should still produce a  
2 corresponding reduction in his sentence. (Reply at 1-2.) The court agrees with the  
3 Government.

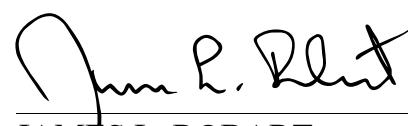
4 As noted, the court may only reduce a sentence pursuant to 18 U.S.C. § 3582(c)(2)  
5 if such a reduction is consistent with the Sentencing Commission's applicable policy  
6 statements. *Waters*, 771 F.3d at 680. United States Sentencing Guidelines  
7 § 1B1.10(b)(2) provides that, except for defendants who received a sentence reduction  
8 based on substantial assistance to the United States, "the court shall not reduce the  
9 defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement  
10 to a term that is less than the minimum of the amended guideline range." U.S.S.G.  
11 § 1B1.10(b)(2). Here, the court imposed a sentence of 74 months of imprisonment,  
12 which is below the low end of the amended range. Accordingly, and because the record  
13 does not show that Mr. Argueta-Gonzalez received a sentence reduction based on  
14 substantial assistance to the United States, the policy statement precludes any reduction  
15 in his sentence. *See id.*; *see also Diaz-Diaz*, 2023 WL 9040636, at \*1 (holding the policy  
16 statement precluded a reduction in sentence under 18 U.S.C. § 3582(c)(2) and  
17 Amendment 821 where the defendant's original 72-month sentence was below the low  
18 end of the amended range).

19                                  **IV. CONCLUSION**

20                                  For the foregoing reasons, the court DENIES Mr. Argueta-Gonzalez's motion for  
21 a reduction in sentence (Dkt. # 33).

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1 Dated this 25th day of January, 2024.  
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JAMES L. ROBART  
United States District Judge